

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Edina Couriers, LLC,

Civil No. 06-2137 (PAM/JSM)

Plaintiff,

v.

MEMORANDUM AND ORDER

UPS Mail Innovations,

Defendant
and Third-Party Plaintiff,

v.

Alpha Transportation Service, Inc.,

Third-Party Defendant.

This matter is before the Court on Defendant UPS Mail Innovations's ("UPS Mail") Motion to Dismiss for Failure to Prosecute or for Summary Judgment, and the Report and Recommendation ("R&R") of Magistrate Judge Janie S. Mayeron recommending that UPS Mail's Motion for Sanctions be granted and that this matter be dismissed with prejudice. The Court grants the Motions and dismisses this matter with prejudice.

BACKGROUND

Plaintiff Edina Couriers, LLC alleges that it is owed \$89,313.89 for mail-delivery services. On October 26, 2007, Defendant UPS Mail Innovations ("UPS Mail") renewed a Motion for Sanctions because Edina Couriers had failed to serve discovery responses or pay attorney's fees per previous court order. Magistrate Judge Mayeron recommended that the Court grant the Motion.

On November 2, 2007, UPS Mail filed a Motion to Dismiss for Failure to Prosecute or for Summary Judgment. By accompanying affidavit, UPS Mail asserted that Edina Couriers neither responded to discovery requests nor satisfied a request to clarify the action's legal basis. UPS Mail further provided evidence that it has paid Edina Couriers and Third-Party Defendant Alpha Transportation Service, Inc., in full, and that Edina Couriers is contractually barred from recovering anything further from UPS Mail. (See Lovejoy Aff. Ex. 5 at ¶ I(d).)

Plaintiff did not appear at a December 19, 2007, hearing on the Motion to Dismiss or for Summary Judgment. Nor did Plaintiff file objections to the R&R within the time allowed. D. Minn. L.R. 72.2(b).

DISCUSSION

When a party fails to respond to discovery requests, the Court “may make such orders in regard to the failure as are just,” including an order dismissing the action. Fed. R. Civ. P. 37(b)(2)(C), (d). Further, the Court may order a civil action dismissed “[f]or failure of the plaintiff to prosecute or to comply with . . . rules [of civil procedure] or any order of the court.” Fed. R. Civ. P. 41(b). Dismissal is warranted when a plaintiff “persistently refused to answer interrogatories properly or to pay sanctions, repeatedly forcing defendant to seek assistance from the district court.” Hutchins v. A.G. Edwards & Sons, 116 F.3d 1256, 1260 (8th Cir. 1997). Dismissal with prejudice, while an “extreme sanction,” is appropriate when a plaintiff shows “willful disobedience of a court order.” Id. (citation omitted).

Here, UPS Mail has established that Edina Couriers has willful disobeyed court orders

and that UPS Mail is entitled to discovery-related sanctions. UPS Mail further has established that dismissal with prejudice is warranted, or in the alternative that it is entitled to summary judgment because it has paid the disputed amount in full and Edina Couriers is contractually barred from maintaining an action to recover additional amounts. Accordingly,

IT IS HEREBY ORDERED that:

1. The Court **ADOPTS** the R&R (Docket No. 59);
2. The Court **GRANTS** UPS Mail's Motion for Sanctions (Docket No. 34);
3. The Court **GRANTS** UPS Mail's Motion to Dismiss for Failure to Prosecute and for Summary Judgment (Docket No. 43); and
4. The Court **DISMISSES** this matter with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: January 3, 2008

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge